

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219273

DATE: December 26, 1985

MATTER OF: Thomas L. Wickstrom - Severance Pay

DIGEST:

Agency announced a transfer of functions and advised employee that, if he declined to move with his function, he could resign and receive severance pay. After the employee submitted his resignation but before its effective date, the agency canceled the transfer of functions and advised the employee that he could withdraw his resignation and retain his position. We hold that the employee is not entitled to receive severance pay because his resignation was voluntary, having been effected after the transfer of functions was canceled and after he was afforded the option of retaining his position. Furthermore, although the employee may have acted in reliance on the transfer-of-function notice, the doctrine of equitable estoppel does not apply here.

Mr. Thomas L. Wickstrom, through counsel, requests reconsideration of our Claims Group's settlement Z-2854687, of April 24, 1985, denying his claim for severance pay. For the reasons set forth below, we sustain our Claims Group's determination.

BACKGROUND

Mr. Wickstrom was employed by the Department of the Army in the Finance and Accounting Office of the Sharpe Army Depot in Lathrop, California. By letter dated March 9, 1984, the Sharpe personnel office notified him that the depot's finance functions would be transferred to the Sacramento Army Depot no later than October 1, 1984. Personnel officials advised Mr. Wickstrom that he could move with his function to Sacramento and, if he declined to transfer, he could resign and receive severance pay.

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On May 7, 1984, Mr. Wickstrom submitted written notice that he would be resigning effective June 8, 1984. Later in May, the Sharpe Army Depot decided to cancel the transfer of functions. The Sharpe personnel office notified Mr. Wickstrom of the cancellation by letter dated June 4, 1984, and, in several counseling sessions, advised him that he could withdraw his resignation and retain his position at the Sharpe Army Depot. Personnel officials further advised Mr. Wickstrom that, if he still wished to resign, his resignation would be regarded as a voluntary separation and he would not be eligible for severance pay.

Effective June 8, 1984, Mr. Wickstrom resigned from the Sharpe Army Depot. The Army denied his claim for severance pay on the basis that his resignation constituted a voluntary separation. Our Claims Group issued a settlement concurring with the Army's determination, and counsel for Mr. Wickstrom has requested that we reconsider that settlement.

DISCUSSION

The provisions of 5 U.S.C. § 5595 (1982) authorize severance pay for an employee who is "involuntarily" separated for reasons other than misconduct, delinquency, or inefficiency after being employed for a continuous period of at least 12 months. Implementing regulations set forth in 5 C.F.R. § 550.706 (1984) provide that separation by resignation may be considered "involuntary" in certain situations, one of which involves an employee who resigns under notice that he will be separated for declining to accompany his activity to another commuting area. However, 5 C.F.R. § 550.701(b)(2) provides that:

"This subpart [severance pay] does not apply to an employee who at the time of separation from the service, is offered and declines to accept an equivalent position in his agency in the same commuting area, including an agency to which the employee with his function is transferred in a transfer of functions between agencies. For purposes of this paragraph, an equivalent

position is a position of like seniority, tenure, and pay other than a retained rate."

It is clear under the above-quoted regulation that severance pay may not be allowed if a transfer of functions takes place and an employee is offered an equivalent position in the same commuting area before his separation. Although the regulation does not expressly address the situation in which, as here, a transfer of functions is canceled and the employee is allowed to retain the same position he was holding when the transfer was first proposed, we have held that there is no basis for distinguishing this situation from the one specifically covered by the regulation. Barry L. Levine, B-206693, February 1, 1983. In both situations, an employee is afforded the option of continuing in service rather than separating, and this option renders his subsequent resignation a voluntary one. See also Ivan Orton, et al., 62 Comp. Gen. 171 (1983), in which we held that 5 C.F.R. § 550.701(b)(2) precludes severance pay if a proposed reduction in force is canceled and an employee is allowed to retain his position, but he nevertheless resigns.

In this case, Mr. Wickstrom resigned after the proposed transfer of functions was canceled and he was afforded the option of retaining his position at the Sharpe Army Depot. Since Mr. Wickstrom chose not to accept the Army's offer of continued employment, his separation was voluntary and he is not eligible for severance pay under 5 U.S.C. § 5595.

Mr. Wickstrom's counsel, however, maintains that the Government is estopped from denying severance pay because Mr. Wickstrom relied to his detriment on the transfer-of-function notice issued by the Sharpe Army Depot. In this regard, Mr. Wickstrom's counsel has submitted documentation indicating that, shortly before the transfer of functions was canceled, Mr. Wickstrom provided his landlord with 30 days' notice that he would be vacating his apartment in California in order to move to Portland, Oregon.

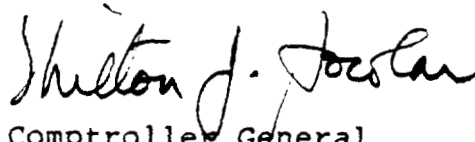
It is not apparent that the elements of estoppel are present in this case. In any event, the doctrine of equitable estoppel invoked by Mr. Wickstrom's counsel is a principle of contract law, and does not apply in the context of Federal employment. Because the Federal Government's

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relationship with its employees is appointive rather than contractual, employees are entitled only those benefits which are conferred by statute or regulation. See Orton, cited above; and William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85 (1976).

Accordingly, for the reasons stated above, we deny Mr. Wickstrom's claim for severance pay and sustain our Claims Group's settlement.

for 
Comptroller General
of the United States